



TEXAS DEPARTMENT OF HEALTH
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INTER-OFFICE

TO: Regional Directors
Directors, Local Health Departments
Directors, Independent WIC Local Agencies
Acting Chief, Bureau of Regional/Local Health Operations

FROM: Gerald D. Cannaday, Jr. **ORIGINAL SIGNED**
Chief, Bureau of Nutrition Services

DATE: September 7, 2001

SUBJECT: Update on WIC Regulations and WIC and Farmers' Market Nutrition Program Rules

WIC Regulations

The Office of the Federal Register issued a new official consolidation of the WIC Regulations at 7 CFR Part 246 which represents updates as of January 2001 and will not include changes which have been subsequently published. You can access the consolidated regulations from the United States Department of Agriculture Food and Nutrition Services web site at:

<http://www.fns.usda.gov/wic/MENU/Regulations/regulations.htm>

Quite a number of changes have taken place since the last consolidation dated January 2000; therefore, please ensure that all staff use this version for reference. Changes which are reflected in this consolidation include: Food Delivery Systems Final Rule, December 2000; WIC Certification Integrity Final Rule, December 2000; Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts Interim Rule, August 2000; and several funding rule changes. Brief summaries of these rules are included on USDA's web site.

WIC and Farmers' Market Nutrition Programs: Rules

The Board of Health adopted final rules for the WIC and Farmers' Market Nutrition Programs in July 2001. Effective date of the rules is August 5, 2001. These rules can be viewed and accessed from the WIC web site via a link to the Texas Administrative Code at:

http://www.tdh.state.tx.us/wichd/gi/program_rules.htm

The Program was advised by our Office of General Counsel to adopt rules for those areas of program operations which impact the public at large (e.g. applicants, vendors, and local agencies seeking to participate in WIC). Policies which can be implemented and enforced through contractual relationships with our local agencies and vendors were not put into Update on WIC Regulations and WIC and

rule. WIC Local Agencies were notified of this effort during the planning stages as announced in memo 00-094 in September 2000.

The rules currently overlap with current policies in your Policy and Procedure Manual. Where overlap occurs, the rules are almost identical to the policies you are familiar with. From the web site above you can see which policies correspond to the newly issued program rules (also see attachment to this memo). Where there is any inconsistency, the rule will prevail. We will keep you updated if we determine that any policies are to be deleted to avoid unnecessary overlap and duplication.

If you have any questions, please contact Valerie Wolfe at (512) 458-7111 extension 2072 or by email to valerie.wolfe@tdh.state.tx.us.

Attachment

ADOPTED RULES

This page is being provided by the Bureau of Nutrition Services as an overview of the adopted rules for the WIC and Farmers' Market Nutrition Programs. Final rules adopted by the Board of Health are codified in the Texas Administrative Code pursuant to Administrative Procedure Act (V.T.C.A. Government Code §2001.001 et seq.) after publication in the *Texas Register*. Rules are not in effect until the effective date of the rule as indicated in the History column.

Rules are available through the link to the Texas Administrative Code (TAC).

Rule citation and name	Texas Administrative Code	History	Rule Highlights
25 TAC, Part 1, Chapter 31, Subchapter B 31.11 Definitions (Farmers' Market Nutrition Program FMNP)	<u>Texas Administrative Code 31.11</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	New rule to implement definitions for the Farmers' Market Nutrition Program.
25 TAC, Part 1, Chapter 31, Subchapter B, 31.12 Farmers' Market Nutrition Program Agreement with the State Agency (FMNP)	<u>Texas Administrative Code 31.12</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	New rule to implement in a separate rule program policy FM:01.0 adopted by reference in rule at the time of the proposal. Specifies the process for a farmers' market association to contract with the WIC Program to provide FMNP services.
25 TAC, Part 1, Chapter 31, Subchapter C, 31.21	<u>Texas Administrative Code 31.21</u>	Rule adopted by Board of Health on 07/13/01.	New rule to implement definitions for the WIC Program.

Definitions (WIC Program)		Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	
25 TAC, Part 1, Chapter 31, Subchapter C, 31.22 Recipient Eligibility Requirements (WIC Program)	<u>Texas Administrative Code 31.22</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	New rule to implement in a separate rule program policies CS:01.1; CS:01.9; CS:02.0; CS:02.1; CS:02.3; CS:03.1; CS:03.1.1; CS:03.3; CS:03.4; CS:03.5; CS:04.8; and GA:01.0 adopted by reference in rule at the time of the proposal. Specifies eligibility requirements for clients – categorical, residency, income, physical presence, and nutrition risk. Includes documentation requirements for application.
25 TAC, Part 1, Chapter 31, Subchapter C, 31.23 Recipients of Supplemental Food Benefits (WIC Program)	<u>Texas Administrative Code 31.23</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	New rule to implement in a separate rule program policy FD:01.4 adopted by reference in rule at the time of the proposal. Specifies who is authorized to receive supplemental food vouchers; the process for assigning a proxy; and the requirements for recipients to provide identification at voucher issuance.
25 TAC, Part 1, Chapter 31, Subchapter C, 31.24 Provision of Immunizations to WIC Applicants and Participants	<u>Texas Administrative Code 31.24</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see	New rule to implement in a separate rule program policies IM:01.0; IM:01.1; IM:03.0 adopted by reference in rule at the time of the proposal. Specifies that immunizations shall be offered to WIC applicants and participants according to a local

(WIC Program)		February 2, 2001 issue.	agency's immunization plan. Requires provision of immunizations be offered regardless of the outcome of an applicant's eligibility for WIC. Requires consent and that immunizations be free of charge.
25 TAC, Part 1, Chapter 31, Subchapter C, 31.25 Certification Periods (WIC Program)	<u>Texas Administrative Code 31.25</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	New rule to implement in a separate rule program policy CS:01.2 adopted by reference in rule at the time of the proposal. Specifies the certification periods for each category of client – pregnant, postpartum, breastfeeding, infant, and child.
25 TAC, Part 1, Chapter 31, Subchapter C, 31.26 Notification to Applicants of Ineligibility (WIC Program)	<u>Texas Administrative Code 31.26</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	New rule to implement in a separate rule program policy CS:01.6 adopted by reference in rule at the time of the proposal. Specifies requirements for written notification of ineligibility and the right to a fair hearing for a client not eligible for WIC.
25 TAC, Part 1, Chapter 31, Subchapter C, 31.27 Notification to Participants of Certification Expiration (WIC Program)	<u>Texas Administrative Code 31.27</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	New rule to implement in a separate rule program policy CS:01.6.2 adopted by reference in rule at the time of the proposal. Specifies that participants shall be notified at least 15 days prior to the expiration of each certification period.

<p>25 TAC, Part 1, Chapter 31, Subchapter C, 31.28</p> <p>Notification to Participants of Termination of Certification (WIC Program)</p>	<p><u>Texas Administrative Code 31.28</u></p>	<p>Rule adopted by Board of Health on 07/13/01.</p> <p>Effective on 08/05/01.</p> <p>Proposed in <i>Texas Register</i>, see February 2, 2001 issue.</p>	<p>New rule to implement in a separate rule program policy CS:01.6.1 adopted by reference in rule at the time of the proposal.</p> <p>Specifies 15 day advance written notice to clients whose certification is terminated for program abuse, funding shortages which result in caseload decreases, or for exceeding income limits</p>
<p>25 TAC, Part 1, Chapter 31, Subchapter C, 31.29</p> <p>Applicant and Participant Rights (WIC Program)</p>	<p><u>Texas Administrative Code 31.29</u></p>	<p>Rule adopted by Board of Health on 07/13/01.</p> <p>Effective on 08/05/01.</p> <p>Proposed in <i>Texas Register</i>, see February 2, 2001 issue.</p>	<p>New rule to implement in a separate rule program policies CR:02.0; CR:03.0; and GA:04.1 adopted by reference in rule at the time of the proposal.</p> <p>Specifies client rights: right to a fair hearing; right to file a complaint; right to be treated without discrimination. Specifies procedures for filing a fair hearing and for the state to conduct the hearing. Specifies the process for the state agency to accept and process a client complaint.</p>
<p>25 TAC, Part 1, Chapter 31, Subchapter C, 31.30</p> <p>Participant Fraud and Abuse (WIC Program)</p>	<p><u>Texas Administrative Code 31.30</u></p>	<p>Rule adopted by Board of Health on 07/13/01.</p> <p>Effective on 08/05/01.</p> <p>Proposed in <i>Texas Register</i>, see February 2, 2001 issue.</p>	<p>New rule to implement in a separate rule program policies GA:14.0; FD:29.0; and FD:29.1 adopted by reference in rule at the time of the proposal.</p> <p>Specifies mandatory sanctions for clients who are determined to have abused the program. Gives the state agency the authority to refer such matters for criminal prosecution and assess and collect a claim to recover the value of benefits illegally received by a client. Defines physical and verbal abuse. Requires client to be notified of right to a fair</p>

			hearing.
25 TAC, Part 1, Chapter 31, Subchapter C, 31.31 Selection of a Local Agency as a WIC Provider (WIC Program)	<u>Texas Administrative Code 31.31</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	New rule to implement in a separate rule program policies AAP:01.0; AAP:01.1; AAP:01.2; AAP:01.3 and GA:13.0 adopted by reference in rule at the time of the proposal. Specifies the priority system the state agency will use to select local agencies. Requires state agency to develop an affirmative action plan annually to identify where there are unserved populations of potentially eligible clients. Specifies the state agency will use a request for proposal process under defined conditions to initiate or expand services. Specifies criteria for evaluating the proposals. Requires the state agency to notify an applicant local agency of disapproval or approval within 30 days of receipt of a complete application.
	<u>Texas Administrative Code 31.32</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	New rule to implement in a separate rule program policies FD:10.0 and FD:10.1 adopted by reference in rule at the time of the proposal. Specifies the state or local agency will conduct an evaluation of a vendor requesting authorization. Specifies the criteria the state agency will use in determining if a vendor will be authorized to participate in the WIC program or to determine if a participating vendor can add additional store locations.
25 TAC, Part 1,	<u>Texas</u>	Rule adopted by	New rule to implement in a

Chapter 31, Subchapter C, 31.33 Selection of Vendors for Reauthorization for Participation (WIC Program)	<u>Administrative Code 31.33</u>	Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue.	separate rule program policy FD:10.1 adopted by reference in rule at the time of the proposal. Specifies the criteria the state agency will use in determining if a vendor will be reauthorized. Requires state agency to provide a vendor who will not be reauthorized with 15 days written notice prior to expiration of the vendor agreement. Addresses the expiration of a vendor agreement and that expiration of the agreement is not subject to appeal. Requires probationary agreements in certain cases. Specifies how a civil money penalty is calculated and gives the state agency the right to negotiate such a penalty in lieu of nonrenewal.
25 TAC, Part 1, Chapter 31, Subchapter C, 31.34 Calculation and Use of Vendor Competitive Pricing Data (WIC Program)	<u>Texas Administrative Code 31.34</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue	New rule to implement in a separate rule program policy FD:10.1 adopted by reference in rule at the time of the proposal. Specifies the calculation for determining competitive pricing criteria. Requires vendors to stay within 108% of the average prices applicable to them. Specifies allowable adjustments to competitive pricing in certain cases. Requires the state agency to provide a vendor with written notice of noncompliance with competitive pricing. Requires vendors who have received one notice of noncompetitive pricing during the last six months of the federal fiscal year to receive a probationary agreement for the next year.

<p>25 TAC, Part 1, Chapter 31, Subchapter C, 31.35 Vendor Agreement (WIC Program)</p>	<p><u>Texas Administrative Code 31.35</u></p>	<p>Rule adopted by Board of Health on 07/13/01.</p> <p>Effective on 08/05/01.</p> <p>Proposed <i>in Texas Register</i>, see February 2, 2001 issue</p>	<p>New rule to implement in a separate rule program policy FD:11.0 adopted by reference in rule at the time of the proposal.</p> <p>Specifies the procedures for executing a vendor agreement between the state agency and a vendor. Requires the sale of a store under disqualification or in the process of disqualification to be a bona fide arms-length transaction in order for the store to receive authorization to participate. Specifies the process by which a vendor who acquires a store/location under previous ownership can apply for authorization. Gives state agency authority to impose sanctions on a vendor even if the vendor has unilaterally terminated the vendor agreement after receipt of a notice of violation. Indemnifies the state agency from losses incurred by a vendor as a result of expiration of the agreement.</p>
<p>25 TAC, Part 1, Chapter 31, Subchapter C, 31.36 Right of Administrative Appeal by a Local Agency or a Vendor (WIC Program)</p>	<p><u>Texas Administrative Code 31.36</u></p>	<p>Rule adopted by Board of Health on 07/13/01.</p> <p>Effective on 08/05/01.</p> <p>Proposed <i>in Texas Register</i>, see February 2, 2001 issue</p>	<p>New rule to implement in a separate rule program policy GA:05.0 adopted by reference in rule at the time of the proposal.</p> <p>Specifies a local agency or vendor has the right to appeal when an application for participation is denied or when any other adverse action is taken by the state agency against the local agency or vendor. Specifies certain actions by the state agency which are not subject to appeal. Requires state agency to provide written notice of the adverse action. Requires 60 days notice by the state agency prior to</p>

			disqualification of a local agency. Specifies the process for a vendor or local agency to appeal and the hearing procedures.
25 TAC, Part 1, Chapter 31, Subchapter C, 31.37 Selection of WIC Program Allowable Foods	<u>Texas Administrative Code 31.37</u>	Rule adopted by Board of Health on 07/13/01. Effective on 08/05/01. Proposed in <i>Texas Register</i> , see February 2, 2001 issue	New rule to implement in a separate rule program policy FD:22.1 adopted by reference in rule at the time of the proposal. Specifies the criteria the WIC program shall use in its annual selection of WIC allowable foods. Specifies the state agency shall issue a request for information to juice and cereal manufacturers when the program determines changes are necessary. Gives the state agency the right to solicit rebates for infant formula and cereal through a competitive bid process.